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IN THE

Supreme Court of the United States

May Term, 1967
No. [redacted] 225

BRENARD G. RHOADES, FREDERICK E. STEWART, JR., ELIZABETH W. STEWART and A. G. MUTIMER

vs.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP,

Defendant

and

COMMONWEALTH OF PENNSYLVANIA,

Intervenor

and

THOMAS J. PAUL, JANE PAUL, ALVIN E. STRACK, CAROL STRACK, FRANK A. BLUST, MARGARET S. BLUST, H. LAVERNE ROSENBERGER, JOHN D. O'HARA, and REVEREND ROBERT E. NICHOLAS,

Intervenors

On Appeal from the Supreme Court of the Commonwealth of Pennsylvania

MOTION TO DISMISS OR TO AFFIRM BY COMMONWEALTH OF PENNSYLVANIA, Intervenor

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IN THE SUPREME COURT
OF THE UNITED STATES

May Term, 1967
No. 1457

Brenard G. Rhoades, Frederick E. Stewart, Jr., Elizabeth W. Stewart and A. G. Mutimer

vs.

School District of Abington Township,
Defendant

and

Commonwealth of Pennsylvania,
Intervenor

and

Thomas J. Paul, Jane Paul, Alvin E. Strack, Carol Strack, Frank A. Blust, Margaret S. Blust, H. Laverne Rosenberger, John D. O'Hara, and Reverend Robert E. Nicholas,
Intervenors

On Appeal From the Supreme Court of the Commonwealth of Pennsylvania

MOTION TO DISMISS OR TO AFFIRM

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the appeal in this proceeding be dismissed, or, in the alternative, that the final judgment of the Supreme Court of Pennsylvania be affirmed, on the ground that the question raised by Appellants has been definitively adjudicated by this Court and is therefore not of such substance as to warrant further argument.

OPINIONS BELOW

The opinions of the Pennsylvania Supreme Court are reported at 424 Pa. 202 and 226 A. 2d 53.

The above-cited Opinion was rendered in connection with the case here on appeal and the case of Betty J. Worrell vs. George W. Matters et al., both of which cases were argued together. The latter case is presently pending before your Honorable Court at No. 1318 October Term, 1966 on Petition for Writ Certiorari to the Supreme Court of Pennsylvania.

JURISDICTION

It is agreed that the statutory provisions upon which the appeal herein is based are contained in Title 28, United States Code, Section 1257(2) and Section 2101.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Appellants fail to recite any constitutional provisions which they consider to be involved.

The pertinent provisions of the Pennsylvania statute involved are adequately set forth in the Jurisdictional Statement, at pp. 3, 4, 5.

COUNTERSTATEMENT OF QUESTION PRESENTED

1. Was the Supreme Court of Pennsylvania correct in holding that the statute (requiring public school districts which provide school bus transportation to public school children to make such transportation available to nonpublic school children along established public school bus routes) does not violate the disestablishment clause of the First Amendment to the Constitution of the United States as applied to the states by the Fourteenth Amendment to the said Constitution?

ARGUMENT

The decision of the Supreme Court of Pennsylvania is plainly correct.

1. The federal question has been adjudicated. It has long been settled that the existence of a prior indistinguishable decision is an obvious basis for summary disposal of an appeal. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311 (1902). The constitutional issue asserted by appellants has been conclusively adjudicated and determined by this Honorable Court in *Everson v. Board of Education*, 330 U.S. 1 (1947). That decision squarely held that a statute such as that here challenged does not violate the First Amendment to the federal constitution.

Appellants present no argument affording any distinction between the *Everson* case and the instant case. It is significant that *all seven* Justices of the Pennsylvania Supreme Court (including the two dissenting Justices) were unanimous in their express recognition of the validity of Act 91 under the Constitution of the United States as interpreted by this Honorable Court in *Everson*. As Bell, C. J., one of the dissenters, stated:

> "So far as the 'Establishment Clause' is concerned, I believe that the present cases are ruled by the leading case of Everson v. Board of Education, 330 U.S., supra, where the facts and issues are strikingly similar."

Rhoades et al. v. School District of Abington Township, 424 Pa. 202, 240 (1967).

This Court has recently reviewed the single constitutional issue herein involved and ruled adversely to petitioner's contentions. In 1961 a decision by the Connecticut Supreme Court of Errors, upholding the constitutionality of a Connecticut statute providing transportation at public expense for nonpublic school children [1], was appealed to this Honorable Court which dismissed the appeal for want of a substantial federal question [2].

2. Appellants present no arguments, not previously before this Court, showing a substantial federal question. Appellants call upon this Honorable Court to hand down a "carefully worded opinion . . . which points out that the public taxpayer may not be called upon to directly or indirectly finance churches or their schools, through the supplying of a transportation system. . ." (Jurisdictional Statement, p. 13.) It is submitted that the opinion of this Court in the *Everson* decision was not only carefully worded but expressly and fully took into account such arguments as appellants now raise. Appellants, in their Jurisdictional Statement, advance nothing in addition which lends basis to their claim that a substantial federal question is presented.

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[1] *Snyder v. Newton*, 147 Conn. 374 (1961).
[2] 365 U.S. 299 (1961).

CONCLUSION

It is respectfully submitted that the appellants present no substantial question for the decision of this Court, and that therefore, this appeal should be dismissed, or, in the alternative the judgment of the Supreme Court of Pennsylvania should be affirmed.

Respectfully submitted,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

RHOADES ET AL. *v.* SCHOOL DISTRICT OF ABINGTON TOWNSHIP ET AL.

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT.

No. 225. Decided October 9, 1967.

PER CURIAM.

The motions to dismiss are granted and the appeal is dismissed for want of a substantial federal question.

MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted.